

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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**ADMINISTRATIVE RULE  
FISCAL IMPACT STATEMENT**

**PROPOSED RULE:** 02-299  
**STATE AGENCY:** Department of Insurance

**DATE PREPARED:** Mar 28, 2003  
**DATE RECEIVED:** Feb 13, 2003

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**Digest of Proposed Rule:** This rule amends 760 IAC 1-21 regarding the manner of determination and the calculation of surcharge for health care providers other than hospitals and physicians and for hospitals that establish financial responsibility by means other than an insurance policy. Copies are available at the Web site for the Department of Insurance at [www.stte.in.us/idoi](http://www.stte.in.us/idoi).

**Governmental Entities:**

State: This rule places no unfunded mandates upon state government.

Local: This rule places no unfunded mandates upon any local government unit.

**Regulated Entities:** (Revised) This rule has two components: (1) It requires hospitals that self-insure to submit documentation to the Indiana Residual Malpractice Insurance Authority for determination of secondary coverage surcharge rates, and (2) It adjusts the surcharge rate for health care providers (excluding physicians and hospitals) based upon actuarial analysis.

(1) The provision requiring hospitals that self-insure to submit documentation to the Indiana Residual Malpractice Insurance Authority (IRMIA) for determination of secondary coverage surcharge rates is expected to have minimal impact on the regulated entity. The provision requires that a hospital that self-insures, to submit the hospital's most recent application for licensure to operate a hospital, and any other information reasonably requested by IRMIA.

(2) The second provision of this rule adjusts the surcharge amount paid by certain entities that participate in the Patient's Compensation Fund (PCF). This rule affects all health care providers other than hospitals and physicians. The current surcharge amount for these allied health professionals is equivalent to 100% of the cost to each health care provider for maintenance of financial responsibility (either self-insured or through a policy of insurance).

The proposed surcharge amount is to be actuarially based and must be inclusive of all claims and expenses from the PCF. Actuarial work contracted by the Department estimates that a surcharge equal to approximately 55% of the primary medical malpractice insurance premium is actuarially correct. Based upon this estimate and taking future projected primary rate increases into consideration, the total surcharge amount forecast for the first full calendar year is between \$6.9 M and \$7.0 M [Note: due to Department data reporting problems this number may actually be higher.]. For CY 2002 the PCF collected a total of \$10.1 M in surcharges for health care providers other than hospitals or physicians [Note: due to Department data

reporting problems this number may actually be higher, see table below for more detail]. The actual amount collected will be dependent upon current premium rates for primary coverage at the time the rule is implemented. If primary coverage rates increase, the amount of surcharges collected would also increase accordingly.

	<b>PCF - All Providers</b>	<b>Groups Affected by Rule</b>	<b>Percent Total</b>
<b>Cash Balance (12/31/02)</b>	\$15.7 M	included in all provider	n/a
<b>Investments (12/31/02)</b>	\$25 M	included in all provider	n/a
<b>Documented Surcharges - CY02 #</b>	\$50.2 M	\$10.1 M	20.1%
<b>Actual Total Surcharges - CY 02 #</b>	\$64.1 M	unknown	n/a
<b>Claims - CY 02*</b>	\$96.4 M	\$13.3 M	13.8%
<b>Proposed Surcharge (est.)</b>	n/a	\$7 M	n/a
<b>Providers Enrolled #</b>	29,076	9,948	34.2%

**Notes:** # Department staff state that due to staff vacancies, electronic data for CY 02 surcharges is incomplete and missing four months data. For purposes of this analysis, current known data was used in determining total proposed surcharge and number of providers enrolled. Actual surcharge and number of providers affected may be higher depending on complete data for CY 02 \*Department staff state that high claims payout for the groups affected by this rule is a vestige from past years. Department staff expect amount of claims payout is expected to plateau then decrease in future years.

#### Background:

The PCF serves as a secondary layer of medical malpractice insurance for participating entities. Damage awards for malpractice are limited to \$1.25 M total for participating entities. The PCF provides coverage for damages between \$250,000 and \$1.25 M. Prior to 1999 the PCF paid claims from \$100,000 to \$750,000 for enrolled individuals.

Indiana statute requires that claims for payment from the PCF must be paid not more than 15 days after the claim is computed. Claims are computed twice a year, June 30 and December 31, payments are due July 15 and January 15 respectively. Statutory provisions also make provision for claims exceeding fund balance. The statute states: *If the balance in the fund is insufficient to pay in full all claims that have become final during a six month period, the amount paid to each claimant must be prorated. Any amount left unpaid as a result of the proration must be paid before the payment of claims that become final during the following six month period* (IC 34-18-6-4).

**Information Sources:** Amy Strati, Department of Insurance; Adam Crowe, Department of Insurance.